Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

COMMENTS OF THE UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

Section 204(a)(3) is intended to provide some regulatory relief for LECs by providing for streamlined tariff filings. This section automatically takes effect for all LEC tariffs one year after the effective date of the Act. It need not be encumbered by any interpretation or additional regulation which would inhibit the streamlining clearly intended by Congress. The Commission should examine all of its rules, including its Part 69 rules, to ensure that current regulations do not conflict with this section.

USTA believes that Congress intended for streamlined tariffs to be lawful when filed. USTA agrees with the Commission that damages cannot be awarded for the period prior to the time the Commission determines that a different rate is the lawful rate.

Congress also intended that all LEC tariff filings, including tariff filings which introduce new services and tariff filings which revise the current rate structure, be eligible for streamlined treatment.

Electronic filings could provide a beneficial means to further Congress' intent so long as security and verification measures are assured. Further, the Commission must not impose any undue financial or administrative burden on LECs to implement an electronic filing system. Such a system should utilize the Commission's World Wide Web page and should not utilize a bulletin board or dial-in database.

Post-effective tariff review is contrary to the Act, would add uncertainty to LEC tariffs and would increase administrative burdens. The measures proposed for the pre-effective tariff review are also burdensome and unnecessary. There is no need for LECs to file sections of the

TRP in advance of the annual access tariff filing.

There are other initiatives the Commission should undertake to streamline the tariff process. The Commission should allow any LEC with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide to file simplified, historically based access tariffs under Section 61.39 of its rules by forbearing from enforcement of both the Subset 3 and the 50,000 access line study area restrictions found in those rules. The Commission should also approve the petition filed by NECA to allow companies which have submitted their own costs, or filed their own tariffs, to return to average schedule status after a reasonable period. Finally, the Commission should streamline the study area waiver process by allowing companies to certify that the Commission's criteria has been met and, absent any objections, allowing the waivers to take effect within thirty days.

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The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the incumbent local exchange carrier (LEC) industry. Its members provide over 95 percent of the incumbent exchange carrier-provided access lines in the U.S. For many years USTA has recommended changes to the Commission's rules to streamline the tariff filing process for LECs in recognition of the fact that streamlined regulation is in the public interest.

I. SECTION 204(a)(3) OF THE 1996 ACT IS SPECIFIC AND SELF-EFFECTUATING AND NEED NOT BE BURDENED WITH ADDITIONAL REGULATION.

As noted by the Commission in its Notice of Proposed Rulemaking (NPRM) released September 6, 1996, Congress clearly intended Section 402(a)(3) to provide some regulatory relief for LECs by streamlining the tariff filing process. Congress understood, and the Commission has stated, that streamlined regulation is in the public interest. For example, the Commission has found that significantly streamlined filing requirements for nondominant

common carriers serve the public interest by promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets and enabling firms to respond quickly to market trends.[1] The Commission has explained that tariff filing requirements impose both direct and indirect costs on users. "They impose direct costs by delaying the availability of new services and price reductions...Many users also complain of the regulatory uncertainty that current tariffing rules inject into the marketplace...Current rules also impose indirect costs on consumers by distorting the competitive process."[2] USTA has long maintained that LEC customers should have the opportunity to achieve the same benefits as the customers of other providers which are not subject to the stringent tariffing requirements imposed on LECs. Congress clearly sought to establish " a pro-competitive, de-regulatory national policy framework" for the telecommunications industry and the plain language of Section 204(a)(3) provides that all LEC tariff filings be streamlined.

Therefore, Section 204(a)(3), which automatically becomes effective for all LEC tariffs filed one year after the effective date of the Act, need not be encumbered by any additional regulation which would in any way inhibit the streamlining intended by Congress. (NPRM at ¶ 5). The Commission must examine all of its rules to ensure that its current regulations do not

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[1]Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6761 (1993).

[2]Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, 6 FCC Rcd 5880, 5895 (1991).

directly or indirectly conflict with this provision of the Act. USTA agrees with the Commission's tentative conclusion that Congress intended to foreclose Commission exercise of its general authority under Section 203(b)(2) to defer up to 120 days tariffs that LECs may file on seven or fifteen days' notice. (NPRM at ¶ 6). This section is clearly at odds with Section 204(a)(3) and could be used to preclude streamlined filings.

II. LEC Tariffs Filed on Seven and Fifteen Days Notice Should Be Deemed Lawful.

The Commission provides two possible interpretations of the phrase "deemed lawful" that would alter the current regulatory treatment of LEC tariffs. (NPRM at ¶ 8). Neither interpretation reflects the specific language of Section 204(a)(3). The Act states that any new or revised charge, classification, regulation or practice filed on a streamlined basis shall be deemed lawful unless the Commission takes action pursuant to Section 204(a)(1). Therefore, a new or revised charge, classification, regulation or practice shall be lawful when filed. This is consistent with the definition contained in Black's Law Dictionary that the word deem means "to determine". Such a determination will address the concerns listed above as expressed by LEC customers by providing certainty as to the status of LEC tariff filings. After the tariff is filed, if the Commission takes action pursuant to Section 204(a)(1), the Commission may undertake a hearing to make a decision regarding the lawfulness of the tariff. (NPRM at ¶ 10). USTA agrees with the Commission's first interpretation that damages cannot be awarded for the period

prior to the time the Commission determines that a different rate is the lawful rate.[3] (NPRM at ¶¶ 9, 11).

Customers will have the same opportunities under the Act to challenge LEC tariff filings and the same remedies as are available to them to challenge the tariffs filed by other providers, although non-dominant carriers, like AT&T and MCI, can file tariffs on one day's notice.

The second alternative proposed by the Commission that LEC streamlined tariffs only be treated as presumed lawful is not sufficient to meet the clear intent of the Act. (NPRM at ¶ 12). This alternative will not alleviate the concerns expressed by the Commission and customers that the current tariff process creates uncertainty in the marketplace and distorts the competitive process. It certainly will not deter LEC competitors from gaming the tariff process in order to further their competitive advantage. The Commission should adopt USTA's interpretation.

III. ALL LEC TARIFFS ARE ELIGIBLE FOR FILING ON A STREAMLINED BASIS.

The only reasonable interpretation which reflects the plain meaning of the Act is to conclude that all LEC tariff filings, including tariff filings which introduce new services and tariff filings which revise the current rate structure, are eligible for filing on a streamlined basis. (NPRM at ¶ 17). This interpretation is consistent with Section 204(a)(1). As the Commission itself points out, this interpretation would certainly simplify the administration of the LEC

[3] Arizona Grocery Co. v. T. & S.F. Ry. Co., 284 U.S. 370, 384 (1932).

tariffing process. It also will reduce the disparity of regulatory treatment which exists between LEC tariffs and the tariffs filed by LEC competitors.

The Commission's tentative conclusion that Section 204(a)(3) only applies to existing services and does not include new services and revised rate structures is clearly at odds with the wording of the Act, which refers to both new and revised charges. (NPRM at ¶ 18). The use of the word "may" permits LEC discretion. A LEC may determine that it would not want streamlined treatment for any reason. It does not mean that the Commission has any authority to refuse streamlined treatment for new services or revised rate structures.

Further, such a conclusion is not in the public interest. The Commission has recognized that the current rules inhibit the introduction of new services. For example, the Commission stated, "[w]e are concerned about the delay and burden that our current rules may cause in introducing new services. Further, many "new" services may actually be discounted versions of existing services. We are concerned that the current system may hinder the introduction of services, a result that is harmful to customers and competition."[4] Excluding new services from the benefits of streamlined tariff filing would not alleviate those concerns.

As defined by the Commission, new services are in the public interest and increase customer options without removing services and options currently available.[5] The introduction

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[4]Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, released September 20, 1995 at ¶ 38.

[5]Second Report and Order, CC Docket No. 87-313, released October 4, 1990 at ¶ 314.

of new LEC services is inhibited by the current application of the Part 69 access charge rules and the extensive codification of access charge elements and subelements. Waivers are required because the access charge elements and subelements underlying many new LEC services and revised rate structures do not fit into the prescribed structure. The Commission's rules should encourage the development and offering of new services. In order to ensure that the Commission's current rules do not conflict with the Act, the Commission should eliminate the Part 69 waiver requirement for the introduction of new services and revised rate structures. The waiver process forces LECs to bear the burden of proving that a new service is in the public interest, which is clearly at odds with Section 157(a) of the Act. Further, the time-consuming Part 69 waiver process is uncertain and unpredictable since the Commission is not required to act within any specified time frame on a waiver request. LEC competitors often game the process to forestall the introduction of new LEC services.

Only LECs are subject to such restrictive tariffing requirements. The Part 69 rules only apply to the LECs. Their competitors are not forced to seek Commission permission to introduce a new service. The Commission must revise its rules to ensure that the current rules do not inhibit the streamlining intended by Congress as well as the pro-competitive objective of the 1996 Act. Therefore, the Commission should eliminate the codification of access elements and subelements which necessitates a waiver.

The Commission tentatively concludes that LECs may file on longer notice periods, but that such tariffs would not be deemed lawful. (NPRM at ¶ 19). Such a conclusion is not

contemplated by the Act. The use of the word "may" in Section 204(a)(3) certainly allows filings on longer notice periods and there is nothing in the wording which would prevent those tariffs from being "deemed lawful" as that phrase is interpreted in these comments. There is no intention expressed by Congress that LECs which file on longer notice periods should be penalized as proposed by the Commission. The choice by a LEC to utilize a longer notice period should not reflect on the lawfulness of the tariffed rates. The Commission can reduce any potential conflict by adopting rule language similar to that used in Sections 61.23(c) and 61.58 and state that tariffs must be filed on "at least" seven and fifteen days notice. (NPRM at ¶ 34).

Finally, the Commission states that Section 204(a)(3) does not preclude the Commission from exercising its forbearance authority under Section 10(a). (NPRM at ¶ 19). USTA agrees that the Commission's forbearance authority extends to any regulation or any provision of the Act.

IV. ADMINISTRATION OF LEC TARIFFS SHOULD BE STREAMLINED.

Additional measures can be taken to better reflect Congress' intent to streamline LEC tariff filings. (NPRM at ¶ 20). USTA will comment on the Commission's proposals and will recommend other ways to reduce the regulatory impediments currently imposed on LEC tariff filings.

A. Electronic Filings.

Electronic filings could provide a beneficial means to further Congress' intent to streamline the LEC tariff process. As the Commission points out, electronic filings could significantly reduce burdens on carriers and the Commission and facilitate access to tariff filings by interested parties. (NPRM at ¶ 21). However, USTA has several concerns regarding such an approach. First, as the Commission observes, the integrity of the tariff filing must be maintained above any considerations of administrative ease. Therefore, the Commission must ensure and LECs must be satisfied that the system is absolutely secure before any type of electronic filing is mandated. Second, the Commission must consider the impact on small LECs who may wish to file their own tariffs, but may not have the resources to initiate certain forms of electronic tariff filing at this time. Until such concerns are resolved, electronic filing should not be mandatory. Third, the Commission must not impose any undue burdens or expenses on LECs to implement an electronic filing system. This would vitiate the effects of streamlining and would not be competitively-neutral.

Use of the Commission's existing World Wide Web page may provide the best means to effectuate an electronic filing system. All tariff filings could be transmitted to the Commission using an appropriate security mechanism. The Commission would note the date and time of the filing, verify receipt of the filing and immediately enter the filing on the company specific section of the Commission's web page. A tariff link could be installed in the Commission's existing primary web page. Clicking on the tariff link would open a new page listing all the

companies that have tariff filings electronically available. Clicking on a company would open a new web page showing the tariff filings. Interested parties should be able to view, print or download the tariff filing without making changes to the tariff filing. The Commission could specify the file format to facilitate this feature.

USTA does not believe that the use of a bulletin board or a dial-in database provide the same advantages that utilization of the World Wide Web can provide. Bulletin boards require a modem and are much slower than the web. A dial-in database would require specific software and would be difficult to administer, both for the Commission and the LECs.

B. Post-Effective Tariff Review.

The Commission requests comment on whether it should rely exclusively on post-effective tariff review, at least for certain types of tariff filings, to ensure compliance with Title II. (NPRM at ¶ 23). Relying exclusively on post-effective tariff review would not further the streamlining intended by Congress. In fact, post-effective tariff review would add uncertainty as to the status of LEC tariffs and could increase administrative burdens. Section 204(a)(1) requires the Commission to exercise its initiative to suspend prior to the effectiveness of the tariff. (NPRM at ¶ 24). Thus, that section limits the Commission's ability to rely exclusively on post effective tariff review. Customers and the Commission have the opportunity to challenge a tariff after it becomes effective and the Commission may award damages if the complaint is upheld. Sufficient consumer protections are already available. Protracted post-effective review as

proposed by the Commission is contrary to the Act and is duplicative. It should not be adopted.

C. Pre-Effective Tariff Review.

As noted above, the Commission has determined that streamlined tariff filing is in the public interest. Therefore, the Commission should not adopt any of the additional measures it proposed, such as requiring that LECs file summaries that provide a more complete description than under current requirements as well as legal analyses with their tariffs and establishing a presumption of unlawfulness. (NPRM at ¶ 25). These measures are clearly contrary to the de-regulatory nature of the Act and the intent of Section 204(a)(3) to provide streamlined treatment of LEC tariff filings. Implementation of the Act should result in reduced regulatory burdens for LECs, not additional burdens. The current descriptions contained in transmittal letters and the Description and Justification (D& J) sections of the tariffs are sufficient for the Commission and other interested parties to determine the content of the proposed tariff change. LECs currently provide information regarding compliance with current Commission rules. Price cap tariff filings must include information sufficient to support the proposed changes in the index. If the filing results in out of band or above cap prices, further information is required. No additional analysis of LEC tariff filings is required.

A presumption of unlawfulness is also contrary to Section 204(a)(3) which requires that streamlined tariffs be deemed lawful. Shifting the burden to LECs to prove that their tariffs are lawful is not permitted by that Section. Any additional burdens cannot be justified.

The Commission also requests comment on the appropriate treatment of tariff transmittals that contain both decreases and increases. (NPRM at ¶ 26). Price cap LECs should continue to identify increases and decreases at the rate element level pursuant to current Part 61 rules. However, in order to ensure a streamlined approach for small and mid-sized LECs, USTA proposes that rate of return LECs be permitted to define rate increases and decreases at the access category level and file streamlined tariffs accordingly. LECs under Optional Incentive Regulation should be permitted to define rate increases and decreases at the basket level and file streamlined tariffs accordingly. The Commission's rules which require that increases and decreases in specific rate elements be listed in tariff transmittals should be eliminated for all non-price cap LECs. This proposal is consistent with the intent of the Act to permit streamlined tariff filings and reflects the fact that customers purchase services which encompass multiple rate elements. It will also ensure that customers of these LECs will realize overall decreases in rates as quickly as the Act permits. These LECs could utilize their discretion to utilize a longer notice period where necessary.

The Commission's proposal that LECs could file rate decreases in a separate transmittal only serves to defeat the purpose of this section to streamline the tariff process. This proposal would seem to double the administrative burden and could be confusing to customers.

New services should be filed on seven day's notice to provide streamlined treatment. As noted above, the introduction of new services is in the public interest and should be made available to customer as quickly as possible.

The best mechanism to alert parties regarding the contents of filings will probably result from the adoption of optional electronic filings. (NPRM at ¶ 26). In addition, the D&J currently utilized by LECs also provides sufficient means to inform interested parties of the contents of a LEC tariff filing. The D&J could easily reflect whether the tariff contains a rate increase, decrease or both. However, any requirements should also apply to the tariff filings of competitive local exchange carriers (CLECs) so that incumbent LECs have the same opportunity to access CLEC tariff filings.

USTA agrees with the Commission's tentative conclusion that seven and fifteen days refer to calendar days, not working or week days. (NPRM at ¶ 26). This conclusion is consistent with other notice periods contained in the Act.

USTA also supports the Commission's proposals to require that petitions against LEC tariff filings that are effective within seven or fifteen days be filed within three days and replies two days after service. (NPRM at ¶ 28). When a due date falls on a weekend or holiday, the filing should be made on the next business day. However, when computing time periods, holidays and weekends should be included. Such petitions should be hand delivered as proposed by the Commission. However, replies do not require hand delivery.[6] The Commission has already concluded that hand-delivered service of replies in a fourteen day tariff filing is not

[6]It is anticipated that petitions and replies could be delivered electronically once any concerns regarding security and verification are resolved.

necessary.[7] USTA supports the Commission's proposal to permit comment on proposed tariffs during the seven or fifteen day notice period.

A standard protective order may not be required in all cases. (NPRM at ¶ 29). Such measures should be determined on a case-by-case basis. USTA has recommended that streamlined filings should not be accompanied by cost support due to the current competitive environment.[8] If cost support is eliminated, a standard protective order would not be necessary. USTA concurs in the comments of the Joint Parties filed June 14, 1996 in GC Docket No. 96-55 regarding the treatment of confidential information submitted to the Commission.

D. Annual Access Tariff Filings.

The Commission proposes to modify Section 69.3(a) of its rules, which requires LECs to make annual access tariff filings on 90 days' notice to be effective on July 1 of each year, to permit streamlined treatment in accordance with Section 204(a)(3) of the Act. (NPRM at ¶ 31). The Commission also proposes that sections of the TRPs be submitted in advance of the tariffs.

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[7]Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, CC Docket No. 92-117, 8 FCC Rcd 1683 (1993).

[8]USTA Comments, CC Docket No. 94-1. Such a determination is consistent with the Commission's decision to permit AT&T to file its business service tariffs on a streamlined basis without cost support and without adherence to price cap ceilings, bands or rate floors. 6 FCC Rcd 5880, 5894 (1991).

USTA agrees that the Act requires all LEC tariffs, including the annual access tariff filing, to be filed on seven or fifteen days' notice. However, there is no justification for requiring that the TRP be filed in advance. Such a proposal is burdensome, is not necessary to assist the tariff review process and would only serve to circumvent Congress' intent to streamline the tariff process. Further, there is no reason to provide different treatment for price cap TRPs.

In addition, the Commission suggests that only pages of the TRP which do not reference rates be submitted early. The only pages which could qualify are the EXG 1 and PCI 1 forms. However, these forms currently cannot be completed until NECA calculates Long Term Support which is contained in the Common Line Basket. Thus, exogenous costs cannot be determined in advance. The PCI 1 form cannot be completed until the EXG 1 form is completed. Consequently, none of the pages of the TRP can be made available until the annual filing is made.

The Commission should adhere to the notice periods established by Congress for the tariff filings and the TRPs. This will provide ample opportunity for interested parties to review the information that supports the rates at the time the rates are filed.

E. Investigations.

The Commission need not establish procedural guidelines to govern the hearing process except if such guidelines will ensure that hearings will be concluded in five months. The process should accommodate the individual circumstances of each case and alternative dispute resolution

methods should be encouraged. However, in order to reflect the intent of Congress that streamlined tariffs be treated as lawful, in order to inaugurate a hearing, a challenger should be required to overcome that strong presumption.

F. Other Streamlined Proposals.

In order to further the objective of streamlining the tariff process, USTA recommends several other proposals which should be implemented consistent with the intent of Section 204(a)(3) of the Act. The Commission should allow any LEC with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide to file simplified, historically based access tariffs under Section 61.39 of its rules by forbearing from enforcement of both the Subset 3 and the 50,000 access line study area restrictions found in those rules. Such tariff filings are easier to analyze because of their historical cost and demand basis and are in effect for two years, thereby reducing the filing burden on the LECs as well as on the Commission. The Commission should allow a greater number of LECs and their customers to benefit from the administrative efficiencies of this approach.

The Commission should also approve the petition filed by NECA to allow companies who have submitted their own costs, or filed their own tariffs, to return to average schedule status after a reasonable period.[9] The use of average schedules provides administrative simplicity and

[9]National Exchange Carrier Association, Petition, RM 8357, filed September 13, 1993.

should be encouraged.

Finally, the Commission should streamline the study area waiver process by allowing companies to certify that the Commission's criteria has been met and, absent any objections, allowing the waivers to take effect within thirty days. This will alleviate the administrative burden imposed on LECs unable to merge their books and consolidate other non-operations items when the mergers are approved by the state commissions.

V. CONCLUSION.

The Commission need only follow the clear language of the Act to permit streamlined treatment of all LEC tariff filings. This will serve the public interest by promoting fair and

efficient competition, fostering service innovation, and enabling LECs to respond quickly to market trends and customer needs. LEC tariffs should be determined to be lawful when filed to provide certainty to the tariffing process.

Respectfully submitted,

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